

UNITED STATES DISTRICT COURT
for the
DISTRICT OF MASSACHUSETTS

CARLOS AGUIAR
Plaintiff

Vs.

LIMA AND CURA FISHING
CORPORATION.
Defendant

Civil Action No. 04-12011-MLW

PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY JUDGEMENT
AND
PLAINTIFF'S CROSS MOTION FOR PARTIAL SUMMARY JUDGMENT ON THE ISSUE
OF CONTRIBUTORY NEGLIGENCE

Now comes the Plaintiff, Carlos A. Aguiar, and respectfully requests that this Honorable Court Deny Defendant Lima & Cura Fishing Corporation's Motion for Summary Judgment. In addition the Plaintiff hereby moves for partial summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure with respect to Defendant's claim of Contributory negligence. As grounds thereof the Plaintiff states that there are genuine issues of material fact with respect to the cause of Plaintiff's accident and that there are sufficient facts upon which to base a finding that the Defendant was negligent and that the Defendant's vessel was unseaworthy. With respect to Defendant's claim of contributory negligence, there are no genuine issues of material fact and the Defendant cannot sustain its burden of establishing sufficient facts from which to base a finding that the Plaintiff's conduct in any way caused or contributed to his injuries.

Plaintiff further relies upon Plaintiff's attached Memorandum of Law with attached exhibits, Plaintiff's Statement of Undisputed Material Facts and Response to Defendant's

Statement of Undisputed Material Facts, and Plaintiff's Motion to Strike Ex. B to Defendant's Memorandum in Support of its Motion for Summary Judgment.

WHEREFORE, the Plaintiff respectfully requests that this Honorable Court Deny Defendant Lima & Cura Fishing Corporation's Motion for Summary Judgment. Plaintiff further requests that this Honorable Court enter partial summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure in favor of the Plaintiff with respect to Defendant's claim of contributory negligence

Respectfully Submitted on
behalf of the Plaintiff Carlos Aguiar,
by his attorney,

/s/ David F. Anderson, Esq.
David F. Anderson
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CERTIFICATE OF SERVICE

I hereby certify that on this date, I electronically filed the within document with the Clerk of the Court using the CM/ECF system which will send notification of such filing(s) to all counsel of record.

/s/ David F. Anderson, Esq.
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30-31 Union Wharf
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Dated: